

**Office of City Manager**

September 25, 2000

Jim Christiansen
Remedial Project Manager
U.S. Environmental Protection Agency
999 18th Street Suite 300
Denver, Co. 80202-2466

Re: **PARK CITY'S CONCERNS AND QUESTIONS REGARDING THE PROPOSED
SOILS ORDINANCE WORK GROUP**

Dear Mr. Christiansen,

As part of the Upper Silver Creek Watershed Investigation, U.S. EPA has proposed the formation of a work group to address issues related to the *Park City Maintenance of Soil Cover and Landscaping Ordinance* (Park City Municipal Code Title 11, Chapter 15, Sections 1- 11). Park City has been assigned the task of leading the Soils Ordinance Work Group.

Since initiating the watershed investigation in February 1999, representatives of U.S. EPA and UDEQ have made numerous statements regarding their concerns about the ordinance. However, we have been in the process more than a year and we are unsure if earlier expressions of concerns by the regulators reflect current issues and expectations. Additionally, most pronouncements have come from EPA will few formal statements from UDEQ. We are unsure if EPA and UDEQ have the same concerns or if you have different and possibly mutually exclusive expectations. Finally, some of the regulators' statements if put into policy would place Park City in the untenable position of being responsible for the implementation, administration and enforcement of a regulatory program which was originally agreed to by EPA and UDEQ, but from which EPA and UDEQ now may have effectively withdrawn their endorsement. We need clarification here.

Park City takes seriously its responsibility to protect the health and safety of its citizens and the people who visit here. Park City and its citizens have invested millions of dollars over the past 15 years in implementing the ordinance. However, before proceeding to a public forum where the future duties and regulatory responsibilities of the Park City municipal government will be discussed, Park City requests a clearer understanding of the expectations of EPA and UDEQ regarding the ordinance. Prior to the initiation of a new soils work group, Park City requests that the regulatory agencies adopt a posture of ownership and responsibility for the future success of the ordinance. Park City should not be forced to accept an outcome that does not have the endorsement and backing of the agencies. Park City should not have to retain the sole responsibility for financing and implementing an environmental regulatory program that EPA and UDEQ seem to resist.

However, prior to moving to a public forum, Park City requests that EPA and UDEQ provide a joint written response to the following specific items:

- 1) EPA has held out "regulatory closure" to the City and to the homeowners in the Prospector neighborhoods. What is the status of the law and regulations under CERCLA regarding regulatory closure? Are there any precedents for regulatory closure at a site such as Prospector? Has EPA ever "closed the books" in such a context? What are the specific

criteria for closure in Prospector? Do EPA and UDEQ have any standards, criteria, interests, goals or motivations regarding regulatory closure?

- 2) EPA has indicated an interest in conducting environmental studies in Park City. Park City is concerned about the very real prospect of significant economic stigma associated with such environmental studies, and skeptical of the value of the information such studies may produce. Park City is also concerned about how environmental studies will be financed. Park City is interested in knowing the regulatory options which are available under the particular circumstances in Prospector. What studies will EPA and UDEQ be proposing to the work group?
- 3) Will EPA and UDEQ be making any specific proposals to the work group regarding proposed changes to the soils ordinance and if so what are they?
- 4) What specific proposals will EPA and UDEQ be making to the work group regarding their respective future participation with the ordinance?
- 5) Park City is concerned that the City will incur increased duties and greater regulatory responsibilities as a result of the discussions of the soils work group. Park City is interested in learning what specific funding opportunities are available to assist local municipalities under these circumstances.
- 6) What discretion will EPA grant Park City in organizing the Soils Ordinance Work Group and working with the facilitator?

Park City trusts that EPA and UDEQ will provide a complete assessment of what the regulatory agencies expect from the process and the proposed Soils Ordinance Work Group.

Sincerely,



Toby Ross
City Manager

cc: Steven Thiriot, UDEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Initial Draft
1/4/00 K

Ref: 8EPR-SR

Mr. Toby Ross
City Manager
Park City Municipal Corporation
445 Marsac Avenue
PO Box 1480
Park City, UT 84060

Dear Toby:

Thank you for your September 25 letter detailing Park City's concerns regarding the proposed soil ordinance work group. EPA respects the sensitivity and difficulty of this issue, and I hope the information we are providing gives Park City the level of comfort and understanding needed to move forward with this important work. This letter is offered as a joint response from EPA and the Utah Department of Environmental Quality (UDEQ). We will both honor the points in this letter to the highest degree possible.

In your letter, you raised several specific issues and questions regarding EPA and UDEQ's positions on the Park City Maintenance of Soil Cover and Landscaping Ordinance (the "Ordinance"). A response to each is provided below. We have targeted our responses only to the Soils Ordinance Workgroup and the Prospector Square "site," and have not addressed other soils issues we must confront. We feel those issues have many similarities but cannot be resolved until we have a clear picture of where we are going on the Ordinance and the original Prospector "site."

1. Do earlier expressions of concern by the regulators reflect current issues and expectations?

Yes. Since beginning discussions on the watershed investigation in early 1999, our concerns on the Ordinance and related soils issues have changed little, if any. If you consult the various documents which chronicle our recent work to date (public meeting transcript, stakeholder meeting minutes, issue sheets, media articles, etc.), I believe you will find that our message has been extremely consistent. However, as our knowledge of the situation has increased, there may have been minor changes in how the situation was discussed. It is certainly possible we have made misstatements or been misunderstood, for which I apologize.



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2. Park City requests that the regulatory agencies adopt a posture of ownership and responsibility for the future success of the Ordinance.

That is exactly what we are both striving to do. When the Ordinance was proposed to EPA, it was clear that the level of cooperation between EPA, Park City, and UDEQ was low. It certainly was not EPA's or UDEQ's preference to move forward with a local ordinance, nor was it done using any EPA authority or regulatory-based process to determine the best method of response. Whether right or wrong, our authority on this site had been circumvented through the legislative/political process. Therefore, we never had an opportunity to fully explore the environmental, financial, implementation, and long-term maintenance issues of various solutions. The Ordinance was *proposed* to us by Park City; to my knowledge it was not something we suggested or worked closely with Park City to develop. We questioned at the time, and still question, if the Ordinance was the best way to remedy the situation at Prospector. However, given the very difficult situation and the fact that Park City felt the Ordinance was the best solution available, EPA had little alternative but to work with Park City to jointly reach a resolution. We ultimately offered limited support of the Ordinance. In essence, though the Ordinance may have not been the best solution in our view, it was a solution supported by most of the community and it did serve to address the possibility of environmental exposures. It is now the situation we must deal with.

While EPA acknowledged that the requirements of the Ordinance, *if complied with*, would mitigate environmental exposures, at no time did we offer unlimited acceptance or endorsement of the Ordinance. Institutional controls, such as the Ordinance, are generally not EPA's favored response method for circumstances such as these. Whenever you leave waste in place, there are long-term issues such as compliance, maintenance, and periodic review which must be dealt with. In residential/multi-property scenarios such as Prospector, we have found these issues are exceptionally difficult to manage, as I'm sure Park City has. These issues were never explored with regards to the Ordinance, and it is these issues we wish to address. If addressed to our satisfaction, we will be able to adopt a posture of ownership and responsibility for the Ordinance within the limits of our authority. That is our goal.

3. EPA has held out "regulatory closure" to the City and to the homeowners in the Prospector neighborhoods. What is the status of the law and regulations under CERCLA regarding regulatory closure? Are there any precedents for regulatory closure at a site such as Prospector? Has EPA ever "closed the books" in such as context? What are the specific criteria for closure in Prospector? Do EPA and UDEQ have any standards, criteria, interests, goals, or motivations regarding regulatory closure?

First, the notion that EPA "held out" regulatory closure seems to imply it was used as a ploy. This was certainly not the case. I frequently used the word "closure" because it was the word used by many citizens. I did not think internally-used EPA terminology such as "no further remedial action planned" or "archived from CERCLIS" would be understandable.

There are many variations on achieving "closure" under CERCLA, each with varying degrees of future regulatory involvement. To go into every detail would be difficult, so I will limit discussion to two basic premises for sites that are already included on CERCLIS, the official database of actual or potential Superfund sites:

- If a site is investigated and found not to meet the requirements for inclusion on the National Priorities List (NPL) or not to pose any unacceptable risk, a site can be given a "No further remedial action planned" designation and "archived" from the CERCLIS database. In this case, no further Superfund involvement would occur unless conditions changed or additional information became available. These sites may also be referred to another program (such as RCRA or the State Voluntary Cleanup Program) if warranted.
- If a site is found to meet the requirements for inclusion on the NPL, EPA can propose the site at its discretion. Once a site is proposed or final on the NPL, and the investigation and cleanup process under CERCLA and the National Contingency Plan (NCP) have run their course, "closure" generally means removal from the proposed or final NPL and legal agreements with any responsible party. The site may or may not be archived from CERCLIS - there may be ongoing maintenance or review requirements which require some Superfund involvement or coordination. If a site is deemed to present unacceptable risk but is not proposed for the NPL, there are other Superfund cleanup processes available which would result in archival from CERCLIS.

Hundreds of sites nationally have achieved "closure" in one of those two basic forms. However, the degree of "closure" differs from site to site. Here are some examples:

- If a site has no contamination present at all, archiving it from CERCLIS would mean the end of Superfund involvement.
- If a site has some contamination, but there is no exposure or unacceptable risk from the contamination, a site may be archived only to reopen it later when the potential for exposure changes (ie new development or changes in standards or science).
- If a site is cleaned up and all contamination is removed, little, if any, future Superfund involvement will be required.
- If a site is cleaned up but some contamination remains on site, some future Superfund involvement may be required in the form of reviews or maintenance.

Lastly, it is important to note that EPA *never* relinquishes our ability to act should a health problem or other unknown conditions arise.

The Silver Creek Tailings Site (aka Prospector Square) is somewhat unique in that it: (1) met the criteria for proposal to the NPL, (2) was removed from NPL consideration *not* through use of EPA authority but through legislative action, (3) is exempted from future NPL listing unless significantly new information comes to light, and (4) is still listed on the CERCLIS database with some outstanding issues which we feel prevent archiving. Nonetheless, the situation at Prospector is not one without parallel. In EPA's view, Prospector is similar to the many sites

which are on CERCLIS, not on the NPL, and have some degree of contamination: if it is proven to EPA's satisfaction that the site is not, and will not, present any unacceptable risk, we will archive it from our CERCLIS database.

Risks from lead in residential soils is a very controversial topic. EPA has dealt with the question of mitigating exposure to contaminated residential soil in many ways. We generally prefer to remove the upper layer of contaminated soil, but sometimes this is not practical or necessary. An example of this, and the most appropriate precedent, is the Smuggler Mine in Aspen, Colorado. Lead was present in soils of a residential area of Aspen. EPA proposed and finalized the site on the NPL in the late 1980s and later proposed substantial soil removal. Local residents, much like Park City, strongly opposed the listing and cleanup and doubted any appreciable health affects. After considerable debate, EPA and other stakeholders agreed to the formation of an external advisory panel to collect and analyze scientific data. Following this data collection and analysis, the panel made recommendations to EPA. EPA accepted these recommendations, and removed the site from the NPL in 1999 with no significant cleanup occurring. Though the early phases of the site were marked with animosity and opposition, the negotiated end result showed that stakeholders can work together to provide EPA sufficient information to remove a site from the NPL. I fully believe that if the data had suggested something different, a more aggressive approach would have been taken in a cooperative fashion.

Each site we deal with is unique, and we try to ensure each decision we make reflects the unique characteristics of each site. Smuggler was substantially different than Prospector, but it had the same universal criteria for closure: reasonable assurance that unacceptable risk to human health or the environment is not, and will not, be caused by contamination at the Site. As I have stated many times before, there are many ways to meet that criteria. Each has advantages and disadvantages and may be suited to a particular site or circumstance. I tend to think of it as a weight of evidence approach - each bit of information adds value, and one hopes the sum makes it clear what direction to take. One also hopes to design a data collection/evaluation process which will increase the likelihood for sufficient evidence. However, this must always be balanced against factors such as cost, public acceptance, and knowledge available at the start.

For the evaluation of the Ordinance, EPA and UDEQ do not have a premeditated process, solution, or assured outcome - it will be a challenge to determine the best way to proceed and we want to work with the citizens and government of Park City to meet that challenge. We will not dictate which direction to go, but will advocate strongly for what we feel is right. Our only interest is ensuring that the Ordinance is doing its job and will continue to in the future. If it is not, we want to address it. We want to make the outcome something everyone, especially the citizens, can live with. We receive no special credit or consideration for either achieving closure or failing to achieve closure on this site. There is no special managerial or organizational pressure to undertake this work - if it is not supported by the local citizenry, we will leave the situation as is. There is no "magic number" or numerical standard which I can provide you which makes the situation simple. I can say that from a personal perspective, members of the site team who are most familiar with Prospector and Park City sincerely hope that the site is not presenting any health risks and would like to archive the site from CERCLIS if the data supports it.

4. EPA has indicated an interest in conducting environmental studies in Park City. Park City is concerned about the very real prospect of significant economic stigma associated with such environmental studies, and skeptical of the value of the information such studies may produce. Park City is also concerned about how environmental studies will be financed. Park City is interested in knowing the regulatory options which are available under the particular circumstances in Prospector.

EPA respects that sometimes our investigations are accompanied by a degree of stigma and public concern. We have committed to taking practical steps to minimize concern in Park City, such as limiting the use of Superfund, and will continue to work with the stakeholders to do that.

However, we have a slightly different conception about stigma than Park City. Stigma was a particular concern during the 1980s when EPA and Superfund were a mystery to the general public and Superfund was popularly associated with sites such as Love Canal. However, in the 1990s, most people have become far more familiar with EPA and Superfund. Most are aware that nearly all former mining towns have some environmental issues to deal with - this isn't a scourge but a fact of life. Most are willing to accept those issues for the quality of life found in these special communities. In fact, locations which proactively engage their environmental issues are attractive places to live for many. In that regard, Park City is no different than Aspen, Breckenridge, Vail, Telluride, Leadville, and a host of other small western ski towns affected by historic mining and host to various EPA activities. There appears to be no mass exodus or real estate crisis in any of those towns.

We believe that *controversy* creates stigma. *Controversy* creates media interest. When government agencies are in agreement, people aren't particularly concerned. We believe your citizens will react to EPA in just the fashion you do - if you show fear and mistrust, so to will your citizens. If you show support, cooperation, and confidence, so too will citizens. However, throughout the initial stages of this watershed work, Park City has offered only limited, qualified acceptance of the watershed process and EPA. We understand this view, particularly in light of the history of Park City. To this point that has been enough: however, if your sincere goal for future work is closure, limited publicity, and reduced stigma, we sincerely believe it is in your best interest to simply acknowledge that there are environmental issues to be dealt with, embrace a cooperative partnership with EPA, and offer positive, public support of the work we propose *together*. I have stated from the beginning that all of the watershed work, including work at Prospector, can be presented in a positive, non-alarmist fashion. I stand by that. We have not sought publicity other than to ensure public awareness.

There has been no public outrage with any of the environmental work we have conducted as part of this process. We have conducted significant water and soil sampling with little or no public interest. Some cleanup is occurring. We have weathered a very difficult issue surrounding drinking water. It is our view that this is because this work has been conducted with no mystery, full public disclosure, a lack of sensationalism, and cooperation. Times have changed. By increasing this focus, even more politically charged issues will be manageable.

Financing *studies* is not too difficult an issue. But, as I have stated since we began discussions, limiting the use of Superfund also limits the ample supply of money available through the Superfund program. In this light, I sincerely commend both Park City and United Park City Mines for contributing significant resources to this effort. Without your contributions, it would not be possible.

EPA does not have an unlimited budget. During these comparatively lean times, our Superfund resources are focused on NPL sites, but significant non-NPL work still receives our attention. Park City is an example. As I mentioned before, the Prospector Site was effectively exempted from NPL listing. However, the fact that Prospector is not on the NPL only prevents us from spending Superfund dollars for physical cleanup work. It does not prevent us from spending dollars for investigation - either directly or through UDEQ, similar to any other site we are assessing. The priority for funding investigative work on this site *may* be lower than other actual or potential NPL sites - it depends on funding in a particular fiscal year, which we do not control. Because of this we cannot make any guarantees, but we recognize that only EPA could likely afford expensive studies and we assume we will have to fund them at this point. As any scope of work and timetable becomes clearer, we will be in a better position to evaluate financial concerns. As always, we would strongly support and encourage joint funding or contribution of resources. Lastly, we formally closed out cost recovery efforts for the Prospector Site several years ago and will not be attempting to recover any costs associated with this work.

Our regulatory options for Prospector are very limited. As far as future *investigation*, no specific process is necessary. We are already in the Superfund "site assessment" pipeline and this will facilitate future investigation and possible archival from CERCLIS. However, to achieve formal process-based EPA "approval" of the Ordinance or a future version of the Ordinance, some type of process selection would be necessary. The only Superfund process that I am aware of that could lead to such process-based approval is the NPL-Remedial Process, spelled out in the National Contingency Plan. The language in the Prospector NPL exemption in the 1986 Superfund Amendments and Reauthorization Act (SARA) reads "(the Silver Creek Tailings Site) shall be deemed removed from the list of sites recommended from inclusion on the NPL, unless (EPA) determines upon site specific data not used in the proposed listing of such (site), that the facility meets requirements of the Hazard Ranking System." This "new information" clause is open to interpretation, but in our minds this would mean uncovering a clear health issue or a serious failure or abandonment of the Ordinance. So, the NPL listing and the remedial process under CERCLA are not considered a viable option at this time.

It is unfortunate, but due to past events at Prospector, neither EPA or UDEQ can assume regulatory responsibility for the Ordinance. When Park City chose to circumvent the Superfund process, you assumed a great deal of responsibility. We will attempt to work with Park City to meet our fundamental concerns through this informal watershed work, and hope to offer written support and archival from CERCLIS at the conclusion, but that is as far as we can go without NPL authority.

5. What studies will EPA and UDEQ be proposing to the group? Will EPA and UDEQ be making any specific proposals to the work group regarding proposed changes to the soils ordinance and if so what are they?

We have discussed this issue numerous times, and I have been queried by the media on this issue many times. The studies and “changes” we will propose and discuss are based on the issues which I have communicated in written form to the stakeholders group. I will not reiterate those here. Again, we do not wish to make one “make or break” proposal, but would rather discuss several options and work with the *group* and community on choosing the best one(s). We cannot and will not dictate to Park City what to do with the Ordinance. There are a variety of ways to get at the information we need, each with different risks, requirements, and likelihood of success.

Our information needs on the original Ordinance area can be placed into three categories: (1) evaluation of effectiveness, (2) full compliance, and (3) long-term maintenance. Each is discussed below.

(1) Evaluation of effectiveness. The Ordinance has been in place at Prospector for well over a decade. No formal review or analysis of field data (rather than administrative) has occurred. While it appears that there are no health issues, there is no data to support (or refute) this. When EPA undertakes a major NPL cleanup, we require five year reviews to ensure conditions have not changed and that the remedy is functioning as intended. We believe a similar evaluation of Prospector is needed, especially given the relatively thin nature of a 6 inch cover.

There are a variety of ways to obtain information regarding the effectiveness of the Ordinance. Each has specific considerations of difficulty, cost, and public acceptance which are not discussed here. Again, a weight of evidence approach is recommended, with possible inputs including:

Measuring Receptors

- Analysis of existing health data. A substantial amount of blood lead data may be readily available from local residents and physicians. This may provide a great deal of information. However, there are limitations to this data. These limitations may include quantity, quality, availability, and statistical problems. Generally, parents who test their children for blood lead are the ones who are most protective and would most likely be very careful to avoid exposure - skewing the results to one subset of the population. It is unclear what we would get from pursuing this information, but it is unlikely it would be sufficient to draw conclusions. It may be a good first step.
- A well-designed, multi-seasonal blood lead study. While there are limitations to what a blood lead study can provide, it is probably the best single source of current conditions we have available. Such a study is usually performed with co-located environmental samples (soil, dust, tap water) to aid in correlation of biological data with environmental data. This type of study was performed at the Smuggler Mine Site in Aspen and was the primary piece of evidence used to support a “no action” remedy and closure. Significant advances in study design and analysis have been made since the 1980s.

Measuring the Pathway

- Collection of “field” data to investigate the condition of the cap across the site. If the 6 inch cap is still sound and this can be demonstrated through sampling, the pathway from the source to the receptor is incomplete and no significant exposure is occurring. This was the intent of the Ordinance. However, taken alone, there are limitations to this approach - data will likely not be obvious. Some failure of the cap may not translate into significant exposure.
- Collection of “field” data to facilitate a risk assessment. Additional information can be sought on current concentrations of contaminants in surface and subsurface soils, as well as the site-specific properties of the contamination itself. This information could be used with approved EPA risk models to determine if excessive risk is possible. However, EPA lead risk models are controversial and often over-conservative with regards to mine wastes.

Again, a weight-of-evidence approach is recommended, with all or some of those inputs considered either up front or successively. Our preference at this point is to collect as much information existing information as possible and supplement this with a well-designed blood lead/co-located environmental sample study and limited field sampling of the cap.

(2) Compliance. Compliance with the Ordinance has always been voluntary. Therefore, there are still some 70-80 properties in the original “site”, mostly residential, where no testing or capping has occurred. This represents a serious potential health risk. EPA cannot archive the site with so many properties still presenting unknowns. EPA and UDEQ are open to any suggestions for meeting this goal and have no specific proposals.

(3) Long-term maintenance. By their very nature, institutional controls and “capping” remedies in active areas are bound to fail. This does not indicate a weakness in administration, but rather a fundamental flaw in institutional controls. In fact, we feel that Park City has done an exceptional job of implementing the Ordinance. However, there are undoubtedly failures of the cap, especially with its shallow depth, and these need to be minimized. We feel this is best accomplished through a long-term program of community education and a review system for correction of failures. Again, there are many options available to meet this need - one important step has already been taken with improving the real estate disclosure statements. We are open to suggestions and have no particular approach in mind.

6. What specific proposals will EPA and UDEQ be making to the work group regarding their respective future participation with the ordinance?

Consistent with the discussion on “closure,” we would like to limit our future involvement as much as appropriate. If we are made confident the Ordinance is working and long-term maintenance issues are addressed at a local level, our future involvement may be practically non-

existent. If these issues are not addressed, we will leave the site on CERCLIS recognizing that there are some outstanding issues, much as before. Regardless, we seek some type of agreement or written understanding with Park City so any future requirements are clear. We have no specific proposals other than a preference for limited future Federal and State involvement. This entire effort is a means to that end.

7. Park City is concerned that the City will incur increased duties and greater regulatory responsibilities as a result of the discussions of the soils work group. Park City is interested in learning what specific funding opportunities are available to assist local municipalities under these circumstances.

There is a very real chance that Park City's duties would expand, though to what degree is unclear. I do not anticipate that major changes to the Ordinance will result from this work. We are already aware that implementation of the Ordinance is a very resource intensive effort for the City and its citizens, but again, we did not choose this route. We sincerely hope that any future changes will not be particularly resource intensive and that some will result in cost or time *savings*, either for the City or for residents.

Superfund was designed for dealing with sites such as Prospector. There are not any other regulatory programs I am aware of equipped to handle such a situation. Unfortunately, given past events and our loss of Superfund authority, there is no Superfund assistance we can offer to City or residents apart from investigation. At any rate, it is unlikely we would fund a local ordinance which we do not control or administer.

However, there may be specific grant opportunities available, such as the EMPACT grant we have discussed, which could assist the City. We will assist the City in researching such grants.

8. What discretion will EPA grant Park City in organizing the Soils Ordinance Work Group and working with the facilitator?

We will grant you a great deal of discretion - this is a unique situation requiring unique solutions. We have asked Park City to lead the soils work group and are not just providing lip service. We have provided an additional neutral facilitator at no cost to the City to assist in this process. As a whole, this is an issue that most affects Park City and, as such, you are the right organization to lead the process. We will argue strongly for our positions and will try to make our bottom-line requirements very clear.

For instance, we have recently discussed how to proceed with the initial start up of the work group. During these discussions, we have made clear our preferences and bottom line requirements (citizen participation from the outset) and explained them. That is all we will do. We leave it to you to attempt to work these issues out, provide initiative, and establish a process. We will make a good faith effort to make whatever process you choose work for us. If at any

time we simply cannot compromise, we will make this very clear. Sometimes our Federal requirements and responsibility are inflexible, but I believe at heart we share the same goals. No matter who is leading the process, I trust we can find a solution that works for both Park City and the regulators. This will require give and take throughout.

Again, I hope these responses provide Park City the comfort and understanding necessary to move forward. Myself and other EPA or UDEQ staff are available any time to discuss these issues in more detail, but we sincerely hope this is sufficient to allow start up of the work group in earnest. We look forward to meeting this challenge with Park City.

Sincerely,

Jim Christiansen
Remedial Project Manager

HCI

TO:

10/4/00

Bert Garcia
Dale Vodehnal
Catherine Roberts
Luke Chavez
Susan Griffin

JIM- GOOD LETTER.
I'D CHANGE TOXIC IN
SOME PLACES. ~~WATER~~
—BERT

FROM: Jim Christiansen

As you all are aware, we have been attempting to head Park City in the direction of evaluating and improving the Prospector Square Soils Ordinance, with the goal of verifying there are no health affects and officially ending our involvement on the site. This is a difficult and controversial task, but an important one. There are likely a number of other contaminated residential areas of Park City besides Prospector which we will have to deal with, and evaluating and closing the book on the Ordinance is an obviously important first step.

We have asked Park City to lead a soils work group to address these issues. Members will include regulatory agencies, city, Prospector citizens, realtors, etc. Park City has a variety of concerns they wish to get clear answers on before we begin. I attached a letter from Toby Ross, city manager, detailing those concerns. I would like you to review my draft reply to those concerns.

Keep in mind the unique situation at Prospector and the need in the future to live up to what we say in the letter.

Please provide comments NLT October 13 so I can reply on October 16. Thanks. Jim x6748



Office of City Manager

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Remedial Project Manager
U.S. Environmental Protection Agency
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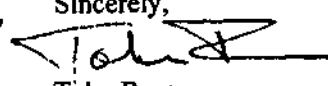
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- 5) Park City is concerned that the City will incur increased duties and greater regulatory responsibilities as a result of the discussions of the soils work group. Park City is interested in learning what specific funding opportunities are available to assist local municipalities under these circumstances.
- 6) What discretion will EPA grant Park City in organizing the Soils Ordinance Work Group and working with the facilitator?

Park City trusts that EPA and UDEQ will provide a complete assessment of what the regulatory agencies expect from the process and the proposed Soils Ordinance Work Group.

Sincerely,


Toby Ross
City Manager

cc: Steven Thiriot, UDEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

Initial Draft
10/4/00 K

Ref: 8EPR-SR

Mr. Toby Ross
City Manager
Park City Municipal Corporation
445 Marsac Avenue
PO Box 1480
Park City, UT 84060

Dear Toby:

Thank you for your September 25 letter detailing Park City's concerns regarding the proposed soil ordinance work group. EPA respects the sensitivity and difficulty of this issue, and I hope the information we are providing gives Park City the level of comfort and understanding needed to move forward with this important work. This letter is offered as a joint response from EPA and the Utah Department of Environmental Quality (UDEQ). We will both honor the points in this letter ~~to the highest degree possible.~~

[EITHER YOU WILL OR YOU WON'T.
IF YOU NEED A LITTLE ROOM, DRID
THIS STATEMENT]

In your letter, you raised several specific issues and questions regarding EPA and UDEQ's positions on the Park City Maintenance of Soil Cover and Landscaping Ordinance (the "Ordinance"). A response to each is provided below. We have targeted our responses only to the Soils Ordinance Workgroup and the Prospector Square site, and have not addressed other soils issues we must confront. We feel those issues have many similarities but cannot be resolved until we have a clear picture of where we are going on the Ordinance and the original Prospector site.

[I'D USE A DIFFERENT PHRASE]

1. Do earlier expressions of concern by the regulators reflect current issues and expectations?

[IMPLIES HE'S NOT
DOING HIS HOMEWORK]

Yes. Since beginning discussions on the watershed investigation in early 1999, our concerns on the Ordinance and related soils issues have changed little, if any. If you consult the various documents which chronicle our recent work to date (public meeting transcript, stakeholder meeting minutes, issue sheets, media articles, etc.), ~~I believe you will find that~~ our message has been extremely consistent. However, as our knowledge of the situation has increased, there may have been minor changes in how the situation was discussed. ~~It is certainly possible we have made misstatements or been misunderstood,~~ for which I apologize.

THOUGHT OUT THE

[DON'T BE SO QUICK TO APOLOGIZE.
YOU DID NOTHING WRONG. IS OFFER
REBUT + CLARIFICATION FOR ANY
MISCOMMUNICATION]



Printed on Recycled Paper

2. Park City requests that the regulatory agencies adopt a posture of ownership and responsibility for the future success of the Ordinance.

That is exactly what we are both striving to do. When the Ordinance was proposed to EPA, it was clear that the level of cooperation between EPA, Park City, and UDEQ was low. It certainly was not EPA's or UDEQ's preference to move forward with a local ordinance, nor was it done using any EPA authority or regulatory-based process to determine the best method of response. Whether right or wrong, our authority on this site had been circumvented through the legislative/political process. Therefore, we never had an opportunity to fully explore the environmental, financial, implementation, and long-term maintenance issues of various solutions. The Ordinance was *proposed* to us by Park City; to my knowledge it was not something we suggested or worked closely with Park City to develop. We questioned at the time, and still question, if the Ordinance was the best way to remedy the situation at Prospector. However, given the very difficult situation and the fact that Park City felt the Ordinance was the best solution available, EPA had little alternative but to work with Park City to jointly reach a resolution. We ultimately offered limited support of the Ordinance. In essence, though the Ordinance may have not been the best solution in our view, it was a solution supported by most of the community and it did serve to address the possibility of environmental exposures. It is now the situation we must deal with.

While EPA acknowledged that the requirements of the Ordinance, *if complied with*, would mitigate environmental exposures, at no time did we offer unlimited acceptance or endorsement of the Ordinance. Institutional controls, such as the Ordinance, are generally not EPA's favored response method for circumstances such as these. Whenever you leave waste in place, there are long-term issues such as compliance, maintenance, and periodic review which must be dealt with. In residential/multi-property scenarios such as Prospector, we have found these issues are exceptionally difficult to manage, as I'm sure Park City has. These issues were never explored with regards to the Ordinance, and it is these issues we wish to address. If addressed to our satisfaction, we will be able to adopt a posture of ownership and responsibility for the Ordinance within the limits of our authority. That is our goal.

3. EPA has held out "regulatory closure" to the City and to the homeowners in the Prospector neighborhoods. What is the status of the law and regulations under CERCLA regarding regulatory closure? Are there any precedents for regulatory closure at a site such as Prospector? Has EPA ever "closed the books" in such as context? What are the specific criteria for closure in Prospector? Do EPA and UDEQ have any standards, criteria, interests, goals, or motivations regarding regulatory closure?

First, the notion that EPA "held out" regulatory closure seems to imply it was used as a ploy. This was certainly not the case. I frequently used the word "closure" because it was the word used by many citizens. I did not think internally-used EPA terminology such as "no further remedial action planned" or "archived from CERCLIS" would be understandable.

CLEAR.

SCENARIO - THIS SENTENCE SAYS THEY JACKED US AROUND. THE REASON WILL THEN LOOK FOR HINTS OF A VINDICTIVE ASS.

I DON'T THINK WE FEEL ABLY, SO DON'T CARE THUS IF NOT NECESSARY) YOU COULD SUMMARIZE WHAT HAPPENED - JUST THE FACTS, NOT YOUR INTERPRETATION.

For with the 11/19/94

There are many variations on achieving "closure" under CERCLA, each with varying degrees of future regulatory involvement. To go into every detail would be difficult, so I will limit discussion to two basic premises for sites that are already included on CERCLIS, the official database of actual or potential Superfund sites: TO

- THAT INDICATE . . .
- If a site is investigated and found not to meet the requirements for inclusion on the National Priorities List (NPL) or not to pose any unacceptable risk, a site can be given a "No further remedial action planned" designation and "archived" from the CERCLIS database. In this case, no further Superfund involvement would occur unless conditions changed or additional information became available. These sites may also be referred to another program (such as RCRA or the State Voluntary Cleanup Program) if warranted.
 - If a site is found to meet the requirements for inclusion on the NPL, EPA can propose the site at its discretion. Once a site is proposed or final on the NPL, and the investigation and cleanup process under CERCLA and the National Contingency Plan (NCP) have run their course, "closure" generally means removal from the proposed or final NPL and legal agreements with any responsible party. The site may or may not be archived from CERCLIS - there may be ongoing maintenance or review requirements which require some Superfund involvement or coordination. If a site is deemed to present unacceptable risk but is not proposed for the NPL, there are other Superfund cleanup processes available which would result in archival from CERCLIS.

Hundreds of sites nationally have achieved "closure" in one of those two basic forms. However, the degree of "closure" differs from site to site. Here are some examples:

- If a site has no contamination present at all, archiving it from CERCLIS would mean the end of Superfund involvement.
- If a site has some contamination, but there is no exposure or unacceptable risk from the contamination, a site may be archived, ^{IT REMAINS MAY} only to reopen it later when the potential for exposure changes (ie new development or changes in standards or science).
- If a site is cleaned up and all contamination is removed, little, if any, future Superfund involvement will be required.
- If a site is cleaned up but some contamination remains on site, some future Superfund involvement may be required in the form of reviews or maintenance.

Lastly, it is important to note that EPA ^{ITS} never relinquishes ^{THAT HAVE PREVIOUSLY UNKNOWN} our ability to act should a health problem or ^{ORIGIN} ~~other unknown~~ conditions arise.

The Silver Creek Tailings Site (aka Prospector Square) is somewhat unique in that it: (1) met the criteria for proposal to the NPL, (2) was removed from NPL consideration ^{ON NOT PRESENT AND COULD} not through use of ^{CHASE} EPA authority but through legislative action, (3) is exempted from future NPL listing unless significantly new information comes to light, and (4) is still listed on the CERCLIS database with some outstanding issues which we feel prevent archiving. Nonetheless, the situation at Prospector is not one without parallel. In EPA's view, Prospector is similar to the many sites

Type numbers for
lots of
questions on
THIS TO DO
THAT
You should
use consistent
terminology...
consider "imminent
substantial threat to H.H. environment"

Response
Action

which are on CERCLIS, not on the NPL, and have some degree of contamination: if it is proven to EPA's satisfaction that the site is not, and will not, present any unacceptable risk, we will archive it from our CERCLIS database.

AGAIN,
CONSISTENT
TERMINOLOGY.

SHOWING
DETRENCH

Risks from lead in residential soils is a very controversial topic. EPA has dealt with the question of mitigating exposure to contaminated residential soil in many ways. We generally prefer to remove the upper layer of contaminated soil, but sometimes this is not practical or necessary. An example of this, and the most appropriate precedent, is the Smuggler Mine in Aspen, Colorado. Lead was present in soils of a residential area of Aspen. EPA proposed and finalized the site on the NPL in the late 1980s and later proposed substantial soil removal. Local residents, much like Park City, strongly opposed the listing and cleanup and doubted any appreciable health affects. After considerable debate, EPA and other stakeholders agreed to the formation of an external advisory panel to collect and analyze scientific data. Following this data collection and analysis, the panel made recommendations to EPA. EPA accepted these recommendations, and removed the site from the NPL in 1999 with no significant cleanup occurring. Though the early phases of the site were marked with animosity and opposition, the negotiated end result showed that stakeholders can work together to provide EPA sufficient information to remove a site from the NPL. I fully believe that if the data had suggested something different, a more aggressive approach would have been taken in a cooperative fashion.

WHERE EXPOSURE MOST OFTEN OCCURS

Each site we deal with is unique, and we try to ensure each decision we make reflects the unique characteristics of each site. Smuggler was substantially different than Prospector, but it had the same universal criteria for closure: reasonable assurance that unacceptable risk to human health or the environment is not, and will not, be caused by contamination at the Site. As I have stated many times before, there are many ways to meet that criteria. Each has advantages and disadvantages and may be suited to a particular site or circumstance. I tend to think of it as a weight of evidence approach - each bit of information adds value, and one hopes the sum makes it clear what direction to take. One also hopes to design a data collection/evaluation process which will increase the likelihood for sufficient evidence. However, this must always be balanced against factors such as cost, public acceptance, and knowledge available at the start.

For the evaluation of the Ordinance, EPA and UDEQ do not have a premeditated process, solution, or assured outcome - it will be a challenge to determine the best way to proceed and we want to work with the citizens and government of Park City to meet that challenge. We will not dictate which direction to go, but will advocate strongly for what we feel is right. Our only interest is ensuring that the Ordinance is doing its job and will continue to in the future. If it is not, we want to address it. We want to make the outcome something everyone, especially the citizens, can live with. We receive no special credit or consideration for either achieving closure or failing to achieve closure on this site. There is no special managerial or organizational pressure to undertake this work - if it is not supported by the local citizenry, we will leave the situation as is. There is no "magic number" or numerical standard which I can provide you which makes the situation simple. I can say that from a personal perspective, members of the site team who are most familiar with Prospector and Park City sincerely hope that the site is not presenting any health risks, and would like to archive the site from CERCLIS if the data supports it.

APPROXIMATE/HAZ.

(NOT RIGHT ON RANGE)

NO
LECTURES!

RESIDENTS

(NOT ALL
RESIDENTS
ARE
CITIZENS)

IF THAT'S THE CASE
MANY

CAMPUS!
THIS COULD
COME BACK
TO HAUNT YOU!

4. EPA has indicated an interest in conducting environmental studies in Park City. Park City is concerned about the very real prospect of significant economic stigma associated with such environmental studies, and skeptical of the value of the information such studies may produce. Park City is also concerned about how environmental studies will be financed. Park City is interested in knowing the regulatory options which are available under the particular circumstances in Prospector.

EPA respects that sometimes our investigations are accompanied by a degree of stigma and public concern. We have committed to taking practical steps to minimize concern in Park City, such as limiting the use of Superfund, and will continue to work with the stakeholders to do that.

However, we have a slightly different conception about stigma than Park City. Stigma was a particular concern during the 1980s when EPA and Superfund were a mystery to the general public and Superfund was popularly associated with sites such as Love Canal. However, in the 1990s, most people have become far more familiar with EPA and Superfund. Most are aware that nearly all former mining towns have some environmental issues to deal with - this isn't a scourge but a fact of life. Most are willing to accept those issues for the quality of life found in these special communities. In fact, locations which proactively engage their environmental issues are attractive places to live for many. In that regard, Park City is no different than Aspen, Breckenridge, Vail, Telluride, Leadville, and a host of other small western ski towns affected by historic mining and host to various EPA activities. ~~There appears to be no mass exodus or real estate crisis in any of those towns.~~

We believe that controversy creates stigma. Controversy creates media interest. When government agencies are in agreement, people aren't particularly concerned. We believe your citizens will react to EPA in just the fashion you do - if you show fear and mistrust, so to will your citizens. If you show support, cooperation, and confidence, so too will citizens. However, throughout the initial stages of this watershed work, Park City has offered only limited, qualified acceptance of the watershed process and EPA. We understand this view, particularly in light of the history of Park City. To this point that has been enough: however, if your sincere goal for future work is closure, limited publicity, and reduced stigma, we sincerely believe it is in your best interest to simply acknowledge that there are environmental issues to be dealt with, embrace a cooperative partnership with EPA, and offer positive, public support of the work we propose together. I have stated from the beginning that all of the watershed work, including work at Prospector, can be presented in a positive, non-alarmist fashion. I stand by that. We have not sought publicity other than to ensure public awareness.

There has been no public outrage with any of the environmental work we have conducted as part of this process. We have conducted significant water and soil sampling with little or no public interest. Some cleanup is occurring. We have weathered a very difficult issue surrounding drinking water. It is our view that this is because this work has been conducted with no mystery, full public disclosure, a lack of sensationalism, and cooperation. Times have changed. By increasing this focus, even more politically charged issues will be manageable.

I'D SHOOT EMPHASIS TO:
- HAVE INVOLVED PUBLIC
- TALKING INFORMED + EXCITED.
- LET'S KEEP DOING THIS.

1. understand what you're
trying to say, but that
implies they should trust
you more w/ us to protect
programs. it implies cooperation
& support. I'd RE write.

GOOD.

Financing *studies* is not too difficult an issue. But, as I have stated since we began discussions, limiting the use of Superfund also limits the ample supply of money available through the Superfund program. In this light, I sincerely commend both Park City and United Park City Mines for contributing significant resources to this effort. Without your contributions, it would not be possible.

EPA does not have an unlimited budget. During these comparatively lean times, our Superfund resources are focused on NPL sites, ^{ALSO} but significant non-NPL work still receives our attention. Park City is an example. ~~As I mentioned before~~, the Prospector Site was effectively exempted from NPL listing. However, the fact that Prospector is not on the NPL only prevents us from spending Superfund dollars for physical cleanup work. It does not prevent us from spending dollars for investigation - either directly or through UDEQ, similar to any other site we are assessing. The priority for funding investigative work on this site may be lower than other actual or potential NPL sites - it depends on funding in a particular fiscal year, which we do not control. Because of this we cannot make any guarantees, but we recognize that only EPA could likely afford expensive studies and we assume we will have to fund them at this point. As any scope of work and timetable becomes clearer, we will be in a better position to evaluate financial concerns. As always, we would strongly support and encourage joint funding or contribution of resources. Lastly, we formally closed out cost recovery efforts for the Prospector Site several years ago and will not be attempting to recover any costs associated with this work.

Our regulatory options for Prospector are very limited. As far as future investigation, no specific process is necessary. We are already in the Superfund "site assessment" pipeline and this will facilitate future investigation and possible archival from CERCLIS. However, to achieve formal process-based EPA "approval" of the Ordinance or a future version of the Ordinance, some type of process selection would be necessary. The only Superfund process that I am aware of that could lead to such process-based approval is the NPL-Remedial Process, spelled out in the National Contingency Plan. The language in the Prospector NPL exemption in the 1986 Superfund Amendments and Reauthorization Act (SARA) reads "(the Silver Creek Tailings Site) shall be deemed removed from the list of sites recommended from inclusion on the NPL, unless (EPA) determines upon site specific data not used in the proposed listing of such (site), that the facility meets requirements of the Hazard Ranking System." This "new information" clause is open to interpretation, but in our minds this would mean uncovering a clear health issue or a serious failure or abandonment of the Ordinance. So, the NPL listing and the remedial process under CERCLA are not considered a viable option at this time.

It is unfortunate, but due to past events at Prospector, neither EPA or UDEQ can assume regulatory responsibility for the Ordinance. When Park City chose to circumvent the Superfund process, you assumed a great deal of responsibility. We will attempt to work with Park City to meet our fundamental concerns through this informal watershed work, and hope to offer written support and archival from CERCLIS at the conclusion, but that is as far as we can go without NPL authority.

ON YOU COULD SAY THAT THAT ORDINANCE ASSUMES THAT WE WANT TO CLOSE THE DECK ON BANK ISSUES IN PARK CITY, & NOT HAVE UNCLE SAM QUESTIONS

PROCESS
CAN YOU SOUND LIKE YOU'RE FOCUSING ON THE EPA CAN STILL DO THIS START DESPITE THE POLITICAL HARDWARE

UNCOVER WHAT THE IT MEANS

ASSESSING THE SITE

SOUNDS BUREAUCRATIC!

SOUNDS TERRIFYING

5. What studies will EPA and UDEQ be proposing to the group? Will EPA and UDEQ be making any specific proposals to the work group regarding proposed changes to the soils ordinance and if so what are they?

We have discussed this issue numerous times, and I have been queried by the media on this issue many times. The studies and "changes" we will propose and discuss are based on the issues which I have communicated in written form to the stakeholders group. I will not reiterate those here. Again, [we do not wish to make one "make or break" proposal, but would rather discuss several options and work with the group and community on choosing the best one(s).] We cannot and will not dictate to Park City what to do with the Ordinance. There are a variety of ways to get at the information we need, each with different risks, requirements, and likelihood of success.

I'D DELETE THE PART OF THIS 1ST Q. FOCES IS ON EPA INSTEAD OF THE ORDINANCE.

Our information needs on the original Ordinance area can be placed into three categories: (1) evaluation of effectiveness, (2) full compliance, and (3) long-term maintenance. Each is discussed below.

(1) Evaluation of effectiveness. The Ordinance has been in place at Prospector for well over a decade. No formal review or analysis of field data (rather than administrative) has occurred. While it appears that there are no health issues, there is no data to support (or refute) this. When EPA undertakes a major NPL cleanup, we require five year reviews to ensure conditions have not changed and that the remedy is functioning as intended. We believe a similar evaluation of Prospector is needed, especially given the relatively thin nature of a 6 inch cover.

There are a variety of ways to obtain information regarding the effectiveness of the Ordinance. Each has specific considerations of difficulty, cost, and public acceptance which are not discussed here. Again, a weight of evidence approach is recommended, with possible inputs including:

Measuring Receptors

~~HEALTH~~

DEPERSONALIZES CHILDREN.
I'D GET A DIFF. TITLE.

- Analysis of existing health data. A substantial amount of blood lead data may be readily available from local residents and physicians. This may provide a great deal of information. However, there are limitations to this data. These limitations may include quantity, quality, availability, and statistical problems. Generally, parents who test their children for blood lead are the ones who are most protective and would most likely be very careful to avoid exposure - skewing the results to one subset of the population. It is unclear what we would get from pursuing this information, but it is unlikely it would be sufficient to draw conclusions. It may be a good first step.
- A well-designed, multi-seasonal blood lead study. While there are limitations to what a blood lead study can provide, it is probably the best single source of current conditions we have available. Such a study is usually performed with co-located environmental samples (soil, dust, tap water) to aid in correlation of biological data with environmental data. This type of study was performed at the Smuggler Mine Site in Aspen and was the primary piece of evidence used to support a "no action" remedy and closure. Significant advances in study design and analysis have been made since the 1980s.

NOT AT SITES w/ WHAT CONT. REMAINING IN PLACE

Measuring the Pathway

- Collection of "field" data to investigate the condition of the cap across the site. If the 6 inch cap is still sound and this can be demonstrated through sampling, the pathway from the source to the receptor is incomplete and no significant exposure is occurring. This was the intent of the Ordinance. However, taken alone, there are limitations to this approach - data will likely not be obvious. Some failure of the cap may not translate into significant exposure.
- Collection of "field" data to facilitate a risk assessment. Additional information can be sought on current concentrations of contaminants in surface and subsurface soils, as well as the site-specific properties of the contamination itself. This information could be used with approved EPA risk models to determine if excessive risk is possible. However, EPA lead risk models are controversial and often over-conservative with regards to mine wastes.

Again, a weight-of-evidence approach is recommended, with all or some of those inputs considered either up front or successively. Our preference at this point is to collect as much information existing information as possible and supplement this with a well-designed blood lead/co-located environmental sample study and limited field sampling of the cap.

CAP RCL - TOTALS TO COUNTY
CAP RCL - TOTALS TO COUNTY
PROPOSALS
AT OTHER
SITES.

(2) Compliance. Compliance with the Ordinance has always been voluntary. Therefore, there are still some 70-80 properties in the original "site", mostly residential, where no testing or capping has occurred. This represents a serious potential health risk. EPA cannot archive the site with so many properties still presenting unknowns. EPA and UDEQ are open to any suggestions for meeting this goal and have no specific proposals.

(3) Long-term maintenance. By their very nature, institutional controls and "capping" remedies in active areas are bound to fail. This does not indicate a weakness in administration, but rather a fundamental flaw in institutional controls. In fact, we feel that Park City has done an exceptional job of implementing the Ordinance. However, there are undoubtedly failures of the cap, especially with its shallow depth, and these need to be minimized. We feel this is best accomplished through a long-term program of community education and a review system for correction of failures. Again, there are many options available to meet this need - one important step has already been taken with improving the real estate disclosure statements. We are open to suggestions and have no particular approach in mind.

6. What specific proposals will EPA and UDEQ be making to the work group regarding their respective future participation with the ordinance?

Consistent with the discussion on "closure," we would like to limit our future involvement as much as appropriate. If we are made confident the Ordinance is working and long-term maintenance issues are addressed at a local level, our future involvement may be practically non-

existent. If these issues are not addressed, we will leave the site on CERCLIS recognizing that there are some outstanding issues, much as before. Regardless, we seek some type of agreement or written understanding with Park City so any future requirements are clear. We have no specific proposals other than a preference for limited future Federal and State involvement. This entire effort is a means to that end.

10 SAY THATS UP FRONT.

7. Park City is concerned that the City will incur increased duties and greater regulatory responsibilities as a result of the discussions of the soils work group. Park City is interested in learning what specific funding opportunities are available to assist local municipalities under these circumstances.

you don't know this yet.

There is a very real chance that Park City's duties would expand, though to what degree is unclear. I do not anticipate that major changes to the Ordinance will result from this work. We are already aware that implementation of the Ordinance is a very resource intensive effort for the City and its citizens, but again, we did not choose this route. We sincerely hope that any future changes will not be particularly resource intensive and that some will result in cost or time savings, either for the City or for residents.

BLANKING.

Superfund was designed for dealing with sites such as Prospector. There are not any other regulatory programs I am aware of equipped to handle such a situation. Unfortunately, given past events and our loss of Superfund authority there is no Superfund assistance we can offer to City or residents apart from investigation. At any rate, it is unlikely we would fund a local ordinance which we do not control or administer.

AND EPA DOES NOT WANT TO CONTINUE TO ADMINISTER LOCAL ORD'S.

However, there may be specific grant opportunities available, such as the EMPACT grant we have discussed, which could assist the City. We will assist the City in researching such grants.

8. What discretion will EPA grant Park City in organizing the Soils Ordinance Work Group and working with the facilitator?

THE CITY WILL HAVE A

We will grant you a great deal of discretion - this is a unique situation requiring unique solutions.

We have asked Park City to lead the soils work group and are not just providing lip service. We have provided an additional neutral facilitator at no cost to the City to assist in this process. As a whole, this is an issue that most affects Park City and, as such, you are the right organization to lead the process. We will argue strongly for our position and will try to make our bottom-line requirements very clear.

SUPPORT ADVOCATE PROTECTING...

For instance, we have recently discussed how to proceed with the initial start up of the work group. During these discussions, we have made clear our preferences and bottom line requirements, citizen participation from the outset, and explained them. That is all we will do. We leave it to you to attempt to work these issues out, provide initiative, and establish a process. We will make a good faith effort to make whatever process you choose work for us. If at any

SOUNDS TOO MUCH LIKE WE STOP THE PUT & THEN MAKE KNOW.

SOUNDS TOO MUCH LIKE EPA CONTROLLING POWER.

time we simply cannot compromise, we will make this very clear. Sometimes our Federal requirements and responsibility are inflexible, but I believe at heart we share the same goals. No matter who is leading the process, I trust we can find a solution that works for both Park City and the regulators. This will require give and take throughout.

Again, I hope these responses provide Park City the comfort and understanding necessary to move forward. ^EMyself and other EPA or UDEQ staff are available any time to discuss these issues in more detail, but we sincerely hope this is sufficient to allow start up of the work group in earnest. We look forward to meeting this challenge with Park City.

Sincerely,

Jim Christiansen
Remedial Project Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Comments
C. Roberts
10/4

Initial Draft
10/4/00 K

Great job - sometimes a little too personal.

Ref: 8EPR-SR

Mr. Toby Ross
City Manager
Park City Municipal Corporation
445 Marsac Avenue
PO Box 1480
Park City, UT 84060

Mr. Ross
Dear Toby:

Thank you for your September 25 letter detailing Park City's concerns regarding the proposed Soil Ordinance work group. EPA respects the sensitivity and difficulty of this issue, and hope the information we are providing gives Park City the level of comfort and understanding needed to move forward with this important work. This letter is offered as a joint response from EPA and the Utah Department of Environmental Quality (UDEQ). (We will both honor the points in this letter to the highest degree possible.) I don't think you need to say this as you "pay homage" in the second sentence.

In your letter, you raised several specific issues and questions regarding EPA and UDEQ's positions on the Park City Maintenance of Soil Cover and Landscaping Ordinance (the "Ordinance"). A response to each is provided below. We have targeted our responses only to the Soils Ordinance Workgroup and the Prospector Square "site," and have not addressed other soils issues we must confront. We feel those issues have many similarities but cannot be resolved until we have a clear picture of where we are going on the Ordinance and the original Prospector "site."

1. Do earlier expressions of concern by the regulators reflect current issues and expectations?

Yes. Since Beginning discussions on the watershed investigation in early 1999, our concerns on the Ordinance and related soils issues have changed little, if any. If you consult the various documents which chronicle our recent work to date (public meeting transcript, stakeholder meeting minutes, issue sheets, media articles, etc.), I believe you will find that our message has been extremely consistent. However, as our knowledge of the situation has increased, there may have been minor (changes) in how the situation was discussed. It is certainly possible we have made misstatements or been misunderstood; (for which I apologize.) optional I don't think you need to apologize!

refinements? have been made in our assessment of the situation.



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2. Park City requests that the regulatory agencies adopt a posture of ownership and responsibility for the future success of the Ordinance.

If is enough to strive toward both ownership & responsibility for the PCSO success.

That is exactly what we are both striving to do. When the Ordinance was proposed to EPA, it was clear that the level of cooperation between EPA, Park City, and UDEQ was low. It certainly was not EPA's or UDEQ's preference to move forward with a local ordinance, nor was it done using any EPA authority or regulatory-based process to determine the best method of response.

I don't know
As you know
Whether right or wrong, our authority on this site had been circumvented through the legislative political process. Therefore, we never had an opportunity to fully explore the environmental, financial, implementation, and long-term maintenance issues of various solutions.

The Ordinance was *proposed to us* by Park City; to my knowledge it was not something we suggested or worked closely with Park City to develop. We questioned at the time, and still question, if the Ordinance was the best way to remedy the situation at Prospector. However, given the very difficult situation and the fact that Park City felt the Ordinance was the best solution available, EPA had little alternative but to work with Park City to jointly reach a resolution. We ultimately offered limited support of the Ordinance. In essence, though the Ordinance may have not been the best solution in our view, it was a solution supported by most of the community and it did serve to address the possibility of environmental exposures. *It is now the situation we must deal with.*

that appeared to have community support.

(how does really know? what the comm. wanted? No one ever looked into it!)

I don't know
While EPA acknowledged that the requirements of the Ordinance, if complied with, would mitigate environmental exposures, at no time did we offer unlimited acceptance or endorsement of the Ordinance. Institutional controls, such as the Ordinance, are generally not EPA's favored response method for circumstances such as these. Whenever you leave waste in place, there are long-term issues such as compliance, maintenance, and periodic review which must be dealt with. In residential/multi-property scenarios such as Prospector, we have found these issues are exceptionally difficult to manage, as I'm sure Park City has. These issues were never explored with regards to the Ordinance, and it is these issues we wish to address. If addressed to our satisfaction, we will be able to adopt a posture of ownership and responsibility for the Ordinance within the limits of our authority. *That is our goal.*

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goal?

achieve closure

We

a majority

There is not much in response to this



4. EPA has indicated an interest in conducting environmental studies in Park City. Park City is concerned about the very real prospect of significant economic stigma associated with such environmental studies, and skeptical of the value of the information such studies may produce. Park City is also concerned about how environmental studies will be financed. Park City is interested in knowing the regulatory options which are available under the particular circumstances in Prospecter.

EPA respects that sometimes our investigations are accompanied by a degree of stigma and public concern. We have committed to taking practical steps to minimize concern in Park City, such as limiting the use of Superfund, and will continue to work with the stakeholders to do that.

However, we have a slightly different conception about stigma than Park City. Stigma was a particular concern during the 1980s when EPA and Superfund were a mystery to the general public and Superfund was popularly associated with sites such as Love Canal. However, in the 1990s, most people have become far more familiar with EPA and Superfund. Most are aware that nearly all former mining towns have some environmental issues to deal with, ~~this isn't a scourge~~ but a fact of life. Most are willing to accept those issues for the quality of life found in these special communities. ~~In fact, locations which proactively engage their environmental issues are attractive places to live for many.~~ In that regard, Park City is no different than Aspen, Breckenridge, Vail, Telluride, Leadville, and a host of other small western ski towns affected by historic mining and host to various EPA activities. There appears to be no mass exodus or real estate crisis in any of those towns.

officials

don't appear to be as concerned

We believe that controversy creates stigma. Controversy creates media interest. When government agencies are in agreement, people aren't particularly concerned. We believe your citizens will react to EPA in just the fashion you do - if you show fear and mistrust, so too will your citizens. If you show support, cooperation, and confidence, so too will citizens. However, throughout the initial stages of this watershed work, Park City has offered only limited, qualified acceptance of the watershed process and EPA. We understand this view, particularly in light of the history of Park City. To this point that has been enough. However, if your sincere goal for future work is closure, limited publicity, and reduced stigma, we sincerely believe it is in your best interest to simply acknowledge that there are environmental issues to be dealt with, embrace a cooperative partnership with EPA, and offer positive public support of the work we propose together. I have stated from the beginning that all of the watershed work, including work at Prospecter, can be presented in a positive, non-alarmist fashion. I stand by that. We have not sought publicity other than to ensure public awareness.

could come back negative - too subjective

There has been no public outrage with any of the environmental work we have conducted as part of this process. We have conducted significant water and soil sampling with little or no public interest. Some cleanup is occurring. We have weathered a very difficult issue surrounding drinking water. It is our view that this is because this work has been conducted with no mystery, full public disclosure, a lack of sensationalism, and cooperation. Times have changed. By increasing this focus, even more politically charged issues will be manageable.

controversy but rather public awareness and understanding of the issues

will have reason to trust

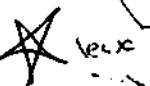
the government to make the right decisions

what focus?

if we say this then its going to be a rebuttal - you are barking them

We can't

We are not aware



Financing ^a studies is not too difficult an issue. But, as I have stated, since we began discussions, limiting the use of Superfund also limits the ~~ample~~ ^{the} supply of money available through the Superfund program. In this light, I sincerely commend both Park City and United Park City Mines for contributing significant resources to this effort. Without your contributions, it would not be possible.

^{primarily} EPA/ ^{UDEQ} does not have an unlimited budget. ^{we} During these comparatively lean times, our Superfund resources are focused on NPL sites, but significant non-NPL work still receives our attention. Park City is an example. As I mentioned before, the Prospector Site was effectively exempted from NPL listing. However, the fact that Prospector is not on the NPL only prevents us from spending Superfund dollars for physical cleanup work. It does not prevent us from spending dollars for investigation - either directly or through UDEQ, similar to any other site we are assessing. The priority for funding investigative work on this site *may* be lower than other actual or potential NPL sites - it depends on funding in a particular fiscal year, which we do not control. ~~Because of this we cannot make any guarantees, but we recognize that only EPA could likely afford expensive studies and we assume we will have to fund them at this point.~~ ^{about funding but anticipate we will provide the needed financial support for this effort.} As any scope of work and timetable becomes clearer, we will be in a better position to evaluate financial concerns. As always, we would strongly support and encourage joint funding or contribution of resources. Lastly, we formally closed out cost recovery efforts for the Prospector Site several years ago and will not be attempting to recover any costs associated with this work.

^{I don't understand process selection} Our regulatory options for Prospector are very limited. As far as future investigation, no specific process is necessary. We are already in the Superfund "site assessment" pipeline and this will facilitate future investigation and possible archival from CERCLIS. However, to achieve formal process-based EPA "approval" of the Ordinance ~~(or a future version of the Ordinance)~~, some type of process selection would be necessary. The only Superfund process that I am aware of that could lead to such process-based approval is the NPL-Remedial Process, spelled out in the National Contingency Plan. The language in the Prospector NPL exemption in the 1986 Superfund Amendments and Reauthorization Act (SARA) reads "(the Silver Creek Tailings Site) shall be deemed removed from the list of sites recommended from inclusion on the NPL, unless (EPA) determines upon site specific data not used in the proposed listing of such (site), that the facility meets requirements of the Hazard Ranking System." This "new information" clause is open to interpretation, but in our minds this would mean uncovering a clear health issue or a ~~serious~~ failure or abandonment of the Ordinance. So, the NPL listing and the remedial process under CERCLA are not considered a viable option at this time.

^{implies "slight" failure is OK} It is unfortunate, ~~but~~ due to past events at Prospector, neither EPA or UDEQ can assume regulatory responsibility for the Ordinance. When Park City chose to circumvent the Superfund process, you assumed a great deal of responsibility. We will attempt to work with Park City to meet our fundamental concerns through this informal watershed work, and ^{if we can provide the constraints legal} hope to offer written support and archival from CERCLIS at the conclusion, but that is as far as we can go without ~~NPL~~ ^{the Superfund program} authority.

^{Do you want to say this?} This paragraph is a little confusing - probably b/c of the PC question of regulatory options. Anyway, maybe you could explain it to me.

5. What studies will EPA and UDEQ be proposing to the group? Will EPA and UDEQ be making any specific proposals to the work group regarding proposed changes to the soils ordinance and if so what are they?

name the issue properly
We have discussed this issue numerous times, and *I vs. we* have been queried by the media on this issue *3 from* many times. The studies and "changes" we will propose and discuss are based on the issues which *have* been communicated in written form to the stakeholders group. *have been responded to* I will not reiterate those here. Again, we do not wish to make a "make or break" proposal, but would rather discuss several options and work with the group and community on choosing the best one(s). We cannot and will not dictate to Park City what to do with the Ordinance. There are a variety of ways to get at the information we need, each with different risks, requirements, and likelihood of success.

Our information needs on the original Ordinance area can be placed into three categories: (1) evaluation of effectiveness, (2) full compliance, and (3) long-term maintenance. Each is discussed below.

(1) Evaluation of effectiveness. The Ordinance has been in place at Prospector for well over a decade. No formal review or analysis of field data (rather than administrative) has occurred. While it appears that there are no health issues, there is no data to support (or refute) this. When EPA undertakes a major NPL cleanup, we require five year reviews to ensure conditions have not changed and that the remedy is functioning as intended. We believe a similar evaluation of Prospector is needed, especially given the relatively thin nature of a 6 inch cover.

Soil
There are a variety of ways to obtain information regarding the effectiveness of the Ordinance. Each has specific considerations of difficulty, cost, and public acceptance which are not discussed here. Again, a weight of evidence approach is recommended, with possible inputs including:

Measuring Receptors

- Analysis of existing health data. A substantial amount of blood lead data may be readily available from local residents and physicians. This may provide a great deal of information. However, there are limitations to this data. These limitations may include quantity, quality, availability, and statistical problems. Generally, parents who test their children for blood lead are the ones who are most protective and would most likely be very careful to avoid exposure - skewing the results to one subset of the population. It is unclear what we would get from pursuing this information, but it is unlikely it would be sufficient to draw conclusions. It may be a good first step.
- A well-designed, multi-seasonal blood lead study. While there are limitations to what a blood lead study can provide, it is probably the best single source of current conditions we have available. Such a study is usually performed with co-located environmental samples (soil, dust, tap water) to aid in correlation of biological data with environmental data. This type of study was performed at the Smuggler Mine Site in Aspen and was the primary piece of evidence used to support a "no action" remedy and closure. Significant advances in study design and analysis have been made since the 1980s.

Measuring the Pathway

- Collection of "field" data to investigate the condition of the cap across the site. If the 6 inch cap is still sound and this can be demonstrated through sampling, the pathway from the source to the receptor is incomplete and no significant exposure is occurring. This was the intent of the Ordinance. However, taken alone, there are limitations to this approach - data will likely not be obvious. Some failure of the cap may not translate into significant exposure.
- Collection of "field" data to facilitate a risk assessment. Additional information can be sought on current concentrations of contaminants in surface and subsurface soils, as well as the site-specific properties of the contamination itself. This information could be used with approved EPA risk models to determine if excessive risk is possible. However, EPA lead risk models are controversial and often over-conservative with regards to mine wastes.

Again, a weight-of-evidence approach is recommended, with all or some of those inputs considered either up front or successively. Our preference at this point is to collect as much ~~information~~ existing information as possible and supplement this with a well-designed blood lead/co-located environmental sample study and limited field sampling of the cap.

(2) Compliance. Compliance with the Ordinance has always been voluntary. Therefore, there are still some 70-80 properties in the original "site", mostly residential, where no testing or capping has occurred. This represents a serious potential health risk. EPA cannot archive the site with so many properties still presenting unknowns. EPA and UDEQ are open to any suggestions for meeting this goal and have no specific proposals.

(3) Long-term maintenance. By their very nature, institutional controls and "capping" remedies in active areas ~~are bound to fail~~. This does not indicate a weakness in administration, but rather a fundamental flaw in institutional controls. In fact, we feel that Park City has done an exceptional job of implementing the Ordinance. However, there are undoubtedly failures of the cap, especially with its shallow depth, and these need to be minimized. We feel this is best accomplished through a long-term program of community education and a review system for correction of failures. Again, there are many options available to meet this need - one important step has already been taken with improving the real estate disclosure statements. We are open to suggestions and have no particular approach in mind.

6. What specific proposals will EPA and UDEQ be making to the work group regarding their respective future participation with the ordinance?

Consistent with the discussion on "closure," we would like to limit our future involvement as much as appropriate. If we are ~~in the~~ confident the Ordinance is working and long-term maintenance issues are addressed at a local level, our future involvement may be practically non-

as previously mentioned!
existent. If these issues are not addressed, we will leave the site on CERCLIS recognizing that there are some outstanding issues, ~~much as before~~. Regardless, we seek some type of agreement or written understanding with Park City so any future requirements are clear. We have no specific proposals other than a preference for limited future Federal and State involvement. This entire effort is a means to that end.

7. Park City is concerned that the City will incur increased duties and greater regulatory responsibilities as a result of the discussions of the soils work group. Park City is interested in learning what specific funding opportunities are available to assist local municipalities under these circumstances.

we
There is a very real chance that Park City's duties would expand, though to what degree is unclear. ~~I~~ do not anticipate that major changes to the Ordinance will result from this work. We are already aware that implementation of the Ordinance is a very resource intensive effort for the City and its citizens, but again, we did not choose this route. We sincerely hope that any future changes will not be particularly resource intensive and that some will result in cost or time savings, either for the City or for residents.

Superfund was designed for dealing with sites such as Prospector. There are not any other regulatory programs I am aware of equipped to handle such a situation. Unfortunately, given past events and our loss of Superfund authority, there is no Superfund assistance we can offer to City or residents apart from investigation. At any rate, it is unlikely we would fund a local ordinance which we do not control or administer.

the *or a reopening of the listing process.*
However, there may be specific grant opportunities available, such as the EMPACT grant we have discussed, which could assist the City. We will assist the City in researching such grants.

8. What discretion will EPA grant Park City in organizing the Soils Ordinance Work Group and working with the facilitator?

We will grant you a great deal of discretion - this is a unique situation requiring unique solutions. We have asked Park City to lead the soils work group and ~~are not just providing lip service. We~~ have provided an additional neutral facilitator at no cost to the City to assist in this process. As a whole, this is an issue that most affects Park City and, as such, you are the right organization to lead the process. We will ~~argue strongly for our positions and will try to make our bottom-line requirements very clear.~~ *participate in the process*

For instance, we have recently discussed how to proceed with the initial start up of the work group. During these discussions, we have made clear our preferences and bottom line requirements ~~citizen participation from the outset and explained them. That is all we will do.~~ We leave it to you to ~~attempt to~~ ^{to} work these issues out, provide ^{leadership} initiative, and establish a process. We will make a good faith effort to make whatever process you choose work for us. If at any

for. Our concern is that the workgroup is has
~~adequately~~ *fair* ~~comprising~~ *represented* ~~by those~~
who are directly impacted by the outcome.
Over →

In this case the residents of Prospect
Square and others who ~~were~~ ~~to~~ are
subject to the ordinance.

time we simply cannot compromise, we will make ^{our position} ~~this very~~ clear. Sometimes our Federal ^{State} requirements and responsibility are inflexible, but ~~I believe~~ ^{at heart} we share the same goals. No matter who is leading the process, ~~I trust~~ ^{we must find} we can find a solution that ~~works~~ ^{will be found} for both Park City and the regulators. ~~This will require give and take throughout.~~

^{Indicate} Again, I hope these responses provide Park City the comfort and understanding necessary to move forward. ~~Myself and other~~ ^{Both} EPA or UDEQ staff are available any time to discuss these issues in more detail, but we sincerely hope this is sufficient to allow start up of the work group in earnest. We look forward to meeting this challenge with Park City.

Sincerely,

Jim Christiansen
Remedial Project Manager

?

Steven

to protect
human
health?
the
environment.

EPA REG. 8

NAME: JIM CHRISTIANSEN

FAX: 303-312-6897

PHONE: 303-312-6748

FROM: LUKE CHAVEZ

PHONE: 303-312-6512

2. Park City requests that the regulatory agencies adopt a posture of ownership and responsibility for the future success of the Ordinance.

That is exactly what we are both striving to do. When the Ordinance was proposed to EPA, it was clear that the level of cooperation between EPA, Park City, and UDEQ was low. It certainly was not EPA's or UDEQ's preference to move forward with a local ordinance, nor was it done using any EPA authority or regulatory-based process to determine the best method of response. Whether right or wrong, our authority on this site had been circumvented through the legislative/political process. Therefore, we never had an opportunity to fully explore the environmental, financial, implementation, and long-term maintenance issues of various solutions. The Ordinance was proposed to us by Park City; to my knowledge it was not something we suggested or worked closely with Park City to develop. We questioned at the time, and still question, if the Ordinance was the best way to remedy the situation at Prospector. However, given the very difficult situation and the fact that Park City felt the Ordinance was the best solution available, EPA had little alternative but to work with Park City to jointly reach a resolution. We ultimately offered limited support of the Ordinance. In essence, though the Ordinance may have not been the best solution in our view, it was a solution supported by most of the community and it did serve to address the possibility of environmental exposures. It is now the situation we must deal with.

While EPA acknowledged that the requirements of the Ordinance, *if complied with*, would mitigate environmental exposures, at no time did we offer unlimited acceptance or endorsement of the Ordinance. Institutional controls, such as the Ordinance, are generally not EPA's favored response method for circumstances such as these. Whenever you leave waste in place, there are long-term issues such as compliance, maintenance, and periodic review which must be dealt with. In residential/multi-property scenarios such as Prospector, we have found these issues are exceptionally difficult to manage, as I'm sure Park City has. These issues were never explored with regards to the Ordinance, and it is these issues we wish to address. If addressed to our satisfaction, we will be able to adopt a posture of ownership and responsibility for the Ordinance within the limits of our authority. That is our goal.

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10/11/2000

12:16

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RM H14
FAD

4. EPA has indicated an interest in conducting environmental studies in Park City. Park City is concerned about the very real prospect of significant economic stigma associated with such environmental studies, and skeptical of the value of the information such studies may produce. Park City is also concerned about how environmental studies will be financed. Park City is interested in knowing the regulatory options which are available under the particular circumstances in Prospector.

EPA respects that sometimes our investigations are accompanied by a degree of stigma and public concern. We have committed to taking practical steps to minimize concern in Park City, such as limiting the use of Superfund, and will continue to work with the stakeholders to do that.

However, we have a slightly different conception about stigma than Park City. Stigma was a particular concern during the 1980s when EPA and Superfund were a mystery to the general public and Superfund was popularly associated with sites such as Love Canal. However, in the 1990s, most people have become far more familiar with EPA and Superfund. Most are aware that nearly all former mining towns have some environmental issues to deal with - this isn't a scourge but a fact of life. Most are willing to accept those issues for the quality of life found in these special communities. In fact, locations which proactively engage their environmental issues are attractive places to live for many. In that regard, Park City is no different than Aspen, Breckenridge, Vail, Telluride, Leadville, and a host of other small western ski towns affected by historic mining and host to various EPA activities. There appears to be no mass exodus or real estate crisis in any of those towns.

We believe that *controversy* creates stigma. *Controversy* creates media interest. When government agencies are in agreement, people aren't particularly concerned. We believe your citizens will react to EPA in just the fashion you do - if you show fear and mistrust, so to will your citizens. If you show support, cooperation, and confidence, so too will citizens. However, throughout the initial stages of this watershed work, Park City has offered only limited, qualified acceptance of the watershed process and EPA. We understand this view, particularly in light of the history of Park City. To this point that has been enough; however, if your sincere goal for future work is closure, limited publicity, and reduced stigma, we sincerely believe it is in your best interest to simply acknowledge that there are environmental issues to be dealt with, embrace a cooperative partnership with EPA, and offer positive, public support of the work we propose *together*. I have stated from the beginning that all of the watershed work, including work at Prospector, can be presented in a positive, non-alarmist fashion. I stand by that. We have not sought publicity other than to ensure public awareness.

There has been no public outrage with any of the environmental work we have conducted as part of this process. We have conducted significant water and soil sampling with little or no public interest. Some cleanup is occurring. We have weathered a very difficult issue surrounding drinking water. It is our view that this is because this work has been conducted with no mystery, full public disclosure, a lack of sensationalism, and cooperation. Times have changed. By increasing this focus, even more politically charged issues will be manageable.

Financing *studies* is not too difficult an issue. But, as I have stated since we began discussions, limiting the use of Superfund also limits the ample supply of money available through the Superfund program. In this light, I sincerely commend both Park City and United Park City Mines for contributing significant resources to this effort. Without your contributions, it would not be possible.

EPA does not have an unlimited budget. During these comparatively lean times, our Superfund resources are focused on NPL sites, but significant non-NPL work still receives our attention. Park City is an example. As I mentioned before, the Prospector Site was effectively exempted from NPL listing. However, the fact that Prospector is not on the NPL only prevents us from spending Superfund dollars for physical cleanup work. It does not prevent us from spending dollars for investigation - either directly or through UDEQ, similar to any other site we are assessing. The priority for funding investigative work on this site *may* be lower than other actual or potential NPL sites - it depends on funding in a particular fiscal year, which we do not control. Because of this we cannot make any guarantees, but we recognize that only EPA could likely afford expensive studies and we assume we will have to fund them at this point. As any scope of work and timetable becomes clearer, we will be in a better position to evaluate financial concerns. As always, we would strongly support and encourage joint funding or contribution of resources. Lastly, we formally closed out cost recovery efforts for the Prospector Site several years ago and will not be attempting to recover any costs associated with this work.

MIGHT THIS
EVER BE
REOPENED?

THE SITE REMAINS

Our regulatory options for Prospector are very limited. As far as future *investigation*, no specific process is necessary. ~~We are already~~ in the Superfund "site assessment" pipeline and this will facilitate future investigation and possible archival from CERCLIS. However, to achieve formal process-based EPA "approval" of the Ordinance or a future version of the Ordinance, some type of process selection would be necessary. The only Superfund process that I am aware of that could lead to such process-based approval is the NPL-Remedial Process, spelled out in the National Contingency Plan. The language in the Prospector NPL exemption in the 1986 Superfund Amendments and Reauthorization Act (SARA) reads "(the Silver Creek Tailings Site) shall be deemed removed from the list of sites recommended from inclusion on the NPL, unless (EPA) determines upon site specific data not used in the proposed listing of such (site), that the facility meets requirements of the Hazard Ranking System." This "new information" clause is open to interpretation, but in our minds this would mean uncovering a clear health issue or a serious failure or abandonment of the Ordinance. So, the NPL listing and the remedial process under CERCLA are not considered a viable option at this time.

It is unfortunate, but due to past events at Prospector, neither EPA or UDEQ can assume regulatory responsibility for the Ordinance. When Park City chose to circumvent the Superfund process, you assumed a great deal of responsibility. We will attempt to work with Park City to meet our fundamental concerns through this informal watershed work, and hope to offer written support and archival from CERCLIS at the conclusion, but that is as far as we can go without NPL authority.

5. What studies will EPA and UDEQ be proposing to the group? Will EPA and UDEQ be making any specific proposals to the work group regarding proposed changes to the soils ordinance and if so what are they?

We have discussed this issue numerous times, and I have been queried by the media on this issue many times. The studies and "changes" we will propose and discuss are based on the issues which I have communicated in written form to the stakeholders group. I will not reiterate those here. Again, we do not wish to make one "make or break" proposal, but would rather discuss several options and work with the group and community on choosing the best one(s). We cannot and will not dictate to Park City what to do with the Ordinance. There are a variety of ways to get at the information we need, each with different risks, requirements, and likelihood of success.

Our information needs on the original Ordinance area can be placed into three categories: (1) evaluation of effectiveness, (2) full compliance, and (3) long-term maintenance. Each is discussed below.

(1) Evaluation of effectiveness. The Ordinance has been in place at Prospector for well over a decade. No formal review or analysis of field data (rather than administrative) has occurred. While it appears that there are no health issues, there is no data to support (or refute) this. When EPA undertakes a major NPL cleanup, we require five year reviews to ensure conditions have not changed and that the remedy is functioning as intended. We believe a similar evaluation of Prospector is needed, especially given the relatively thin nature of a 6 inch cover.

There are a variety of ways to obtain information regarding the effectiveness of the Ordinance. Each has specific considerations of difficulty, cost, and public acceptance which are not discussed here. Again, a weight of evidence approach is recommended, with possible inputs including:

Measuring Receptors

- Analysis of existing health data. A substantial amount of blood lead data may be readily available from local residents and physicians. This may provide a great deal of information. However, there are limitations to this data. These limitations may include quantity, quality, availability, and statistical problems. Generally, parents who test their children for blood lead are the ones who are most protective and would most likely be very careful to avoid exposure - skewing the results to one subset of the population. It is unclear what we would get from pursuing this information, but it is unlikely it would be sufficient to draw conclusions. It may be a good first step.
- A well-designed, multi-seasonal blood lead study. While there are limitations to what a blood lead study can provide, it is probably the best single source of current conditions we have available. Such a study is usually performed with co-located environmental samples (soil, dust, tap water) to aid in correlation of biological data with environmental data. This type of study was performed at the Smuggler Mine Site in Aspen and was the primary piece of evidence used to support a "no action" remedy and closure. Significant advances in study design and analysis have been made since the 1980s.

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existent. If these issues are not addressed, we will leave the site on CERCLIS recognizing that there are some outstanding issues, much as before. Regardless, we seek some type of agreement or written understanding with Park City so any future requirements are clear. We have no specific proposals other than a preference for limited future Federal and State involvement. This entire effort is a means to that end.

7. Park City is concerned that the City will incur increased duties and greater regulatory responsibilities as a result of the discussions of the soils work group. Park City is interested in learning what specific funding opportunities are available to assist local municipalities under these circumstances.

There is a very real chance that Park City's duties would expand, though to what degree is unclear. I do not anticipate that major changes to the Ordinance will result from this work. We are already aware that implementation of the Ordinance is a very resource intensive effort for the City and its citizens, but again, we did not choose this route. We sincerely hope that any future changes will not be particularly resource intensive and that some will result in cost or time savings, either for the City or for residents.

Superfund was designed for dealing with sites such as Prospector. There are not any other regulatory programs I am aware of equipped to handle such a situation. Unfortunately, given past events and our loss of Superfund authority, there is no Superfund assistance we can offer to City or residents apart from investigation. At any rate, it is unlikely we would fund a local ordinance which we do not ~~control~~ administer.

However, there may be specific grant opportunities available, such as the EMPACT grant we have discussed, which could assist the City. We will assist the City in researching such grants.

8. What discretion will EPA grant Park City in organizing the Soils Ordinance Work Group and working with the facilitator?

We will grant you a great deal of discretion - this is a unique situation requiring unique solutions. We have asked Park City to lead the soils work group and are not just providing lip service. We have provided an additional neutral facilitator at no cost to the City to assist in this process. As a whole, this is an issue that most affects Park City and, as such, you are the right organization to lead the process. We will argue strongly for our positions and will try to make our bottom-line requirements very clear, ^{AS TO CITIZENS} IN AN UPRIGHT & OPEN MANNER.

For instance, we have recently discussed how to proceed with the initial start up of the work group. During these discussions, we have made clear our preferences and bottom line requirements (citizen participation from the outset) and explained them. That is all we will do. We leave it to you to attempt to work these issues out, provide initiative, and establish a process. We will make a good faith effort to make whatever process you choose work for us. If at any

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time we simply cannot compromise, we will make this very clear. Sometimes our Federal requirements and responsibility are inflexible, but I believe at heart we share the same goals. No matter who is leading the process, I trust we can find a solution that works for both Park City and the regulators. This will require give and take throughout.

Again, I hope these responses provide Park City the comfort and understanding necessary to move forward. Myself and other EPA or UDEQ staff are available any time to discuss these issues in more detail, but we sincerely hope this is sufficient to allow start up of the work group in earnest. We look forward to meeting this challenge with Park City.

Sincerely,

Jim Christiansen
Remedial Project Manager



mstraube@inquo.net on 10/09/2000 05:18:54 PM

To: Jim Christiansen/EPR/R8/USEPA/US@EPA

CC:

Subject Re: draft response

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Jim: I looked over your draft response to Park City -- mostly for tone and trying to anticipate Toby Ross's reactions. Overall, it looks good to me. I'm a big believer in being direct and acknowledging limitations, while outlining opportunities. Your letter does those things. While it is already quite long, I have a few suggestions for the letter that will add to its length. I think that's OK; this length and completeness reflects the commitment you/EPA/UDEQ bring to the issues.

1. Is there any possibility that someone from UDEQ can sign the letter with you?? Or send their own accompanying letter that just affirms your statements in the first paragraph that both agencies will "honor the points ..."?

2. I think Park City needs a little more education about the nature of the collaborative process you want them to be the leader of. There are points in the letter where you could give additional comfort that identifying issues and exploring solutions will be done in partnership with Park City and other stakeholders, and that answering some of the questions Park City asked would be premature. There are a few spots in the letter where I think these points can be made:

- second paragraph, "In your letter, you raised ...": At the end of this paragraph, you could say something about how you hope this soils ordinance working group will build/strengthen/whatever a productive working relationship between all the stakeholders that will enable you all to move forward together on the non-ordinance issues in the future.

- section 3, fifth paragraph, starting with "Risks from lead ...": I am assuming that the process undertaken at Smuggler Mine is similar to the process you envision for Park City. At the end of this paragraph might be a good opportunity to reemphasize that point bluntly -- we are envisioning a similar process for Park City (not necessarily with the same results), where the stakeholders work together to identify the issues and potential solutions.

- section 3, sixth paragraph, starting with "Each site we deal with is unique ...": The analytical process you describe at the end of this paragraph is the work of the working group. If you agree, say it here.

- section 5, first paragraph, third sentence, starting with "Again, we do

not wish to make ...": This is another opportunity to outline what you see as the working group's assignment: 1. to define issues/ problems; 2. brainstorm potential solutions (including funding sources); and 3. make choices together.

- section 5, last paragraph, end: You mention that you're open to suggestions at the end of each sub-section below. It might be good to make the general statement here -- EPA/UDEQ are open to suggestions. These are ideas you will be sharing, but all stakeholders will have a full opportunity to put their suggestions (and concerns) on the table, and joint discussion/review/decision will follow.

- section 8, end of first paragraph: "We will argue strongly for our positions and will try to make our bottom-line requirements very clear." Another opportunity to describe the collaborative process. You could add something like: "But, we will make every attempt to understand Park City's concerns and requirements, and feel sure we can all be flexible and open-minded in fashioning workable solutions."

3. A few specific points:

- section 2, first paragraph, towards end, "We ultimately offered limited support of the Ordinance.": Park City does not agree that EPA/UDEQ offered "limited support" of the ordinance. They read the "Reader's Digest" version of the EPA letter approving the ordinance to offer full support, virtually ignoring the qualifications outlined in the full letter. I'm not disagreeing with your characterization, just warning you that this may be a red flag or sticking point. Are there easy quotes from the full-length EPA letter from years ago that might reflect the "limited support" that was given?

- section 2, first paragraph, last sentence, " It is now the situation we must deal with.": This sounds so grudging (I know that's how EPA feels). How about "it is now the situation we WILL deal with." ?

- section 3, third paragraph, starting with "Hundreds of sites ...", second bullet ("(ie new development of changes in standards or science).": Know that this too may be a red flag to Park City. They don't think it's fair to come back after some years and apply "changes in standards or science" to demand additional action. You have your legal citations/support for this, right??

- section 3, third paragraph, fourth bullet "some future Superfund involvement may be required ...": Isn't a 5-year review required by CERCLA, at least for NPL sites? What about for non-NPL sites?

- section 4, third paragraph, starting with "We believe that controversy creates stigma ...": This is GREAT!

- section 4, sixth paragraph, starting with "EPA does not have an unlimited budget ...", last line: Are you saying no cost recovery for past and/or future work??

- section 4, seventh paragraph, starting with "Our regulatory option ...", last line: I could foresee a discussion at some time in the future that reevaluates whether Park City's objection to NPL listing is the most cost-effective course to dealing with whatever is found in future investigations. Do you want to open the door for that here by saying something like, "unless, weighing all the pros and cons, Park City's perspective on this issue changes in the future", or just let it be?

- section 5, third paragraph, third sentence, starting with "When EPA undertakes ...": If I remember correctly, CERCLA itself requires the five-year reviews.

- section 7. Are you intentionally buying into their assumption that the ordinance is the only way to go for Prospector Square? Although Park City does not seem ready to look at any other options right now, that could change. In the second paragraph, third sentence (starting with "Unfortunately, ...", you could add at the end something like "under the current legal situation."

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